



OFFICE OF THE ATTORNEY GENERAL OF TEXAS  
AUSTIN

GERALD C. MANN  
ATTORNEY GENERAL

Honorable George H. Sheppard  
Comptroller of Public Accounts  
Austin, Texas

Dear Sir:

Opinion O-4401

Re: Whether use tax must be  
paid by person moving to  
Texas from another state  
on automobile brought  
with him.

In your letter of February 2, 1942, you submit  
the following facts:

Heretofore a person has purchased an automobile  
in the State of New Mexico at a time when he was a resi-  
dent of that State. He now moves his residence to Texas  
and brings the car with him for use upon the highways  
of this State. You request our opinion as to whether or  
not the use tax levied by Section 2, Article 6, House Bill  
No. 8, 47th Legislature, must be paid as a requisite of the  
registration of this vehicle in Texas. Section 1-a and  
Section 2, Article 6, read as follows:

"There is hereby levied a tax upon every  
retail sale of every motor vehicle sold in this  
State, such tax to be equal to one (1) per cent  
of the total consideration paid or to be paid to  
the seller by the buyer, which consideration  
shall include the amount paid or to be paid for  
said motor vehicle and all accessories attached  
thereto at the time of the sale, whether such  
consideration be in the nature of cash, credit,  
or exchange of property, or a combination of  
these. In the event the consideration received  
by the seller includes any tax imposed by the  
Federal Government, then such Federal tax shall  
be deducted from such consideration for the pur-  
pose of computing the amount of tax levied by this  
Article upon such retail sale. . .

"There is hereby levied a use tax upon every motor vehicle purchased at retail sale outside of this State and brought into this State for use upon the public highways thereof by a resident of this State or by firms or corporations domiciled or doing business in this State. Such tax shall be equal to one (1) per cent of the total consideration paid or to be paid for said vehicle at said retail sale. The tax shall be the obligation of and be paid by the person, firm, or corporation operating said motor vehicle upon the public highways of this State."

It is noted that the use tax does not apply to cases already reached by the sales tax levied in Section 1. The use tax levied in Section 2 is compensatory to the sales tax levied in Section 1. As pointed out in our Opinion No. 0-3486, one of the effects of such compensatory tax must be that retail sellers in Texas will be helped to compete upon terms of equality with retail dealers in other states who are exempt from a sales tax or any corresponding burden. Another effect, or at least another tendency, must be to avoid the drain upon the revenues of the State, buyers not being tempted to place their orders in other states in the effort to escape payment of the tax on local sales.

We would say that in normal course of business a man purchases his automobile in the State of his residence, the contrary being unusual rather than the usual thing done. As a general rule the fact that Texas levies the sales tax in Section 1 has not been a factor causing the non-resident to purchase his automobile in the State of his residence. The Texas Act had no influence on the place of purchase and will not influence such purchases in the future as a general thing.

We think the language of Section 2 contem-

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plates that the tax should be due only in case the purchaser is a resident of this State at the time of purchase as well as at the time he brings the car into this State. As noted from the above, a contrary construction is not required, either to eliminate the temptation of buyers to place their orders in other states in order to escape the sales tax or to bring about equality of competition between retail dealers in this State and the other state. Our answer to your question, therefore, is that the use tax is not due under the fact situation above outlined. Whether the automobile was purchased before or after May 1, 1941, the effective date of House Bill 8, is immaterial.

Yours very truly

APPROVED FEB 16 1942

ATTORNEY GENERAL OF TEXAS

*Norm Sullivan*

FIRST ASSISTANT  
ATTORNEY GENERAL

By *Glenn R. Lewis*

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GEL:BT

